

108TH CONGRESS  
1ST SESSION

# S. 1307

To authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to assist in the implementation of fish passage and screening facilities at non-Federal water projects, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 20, 2003

Mr. SMITH introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to assist in the implementation of fish passage and screening facilities at non-Federal water projects, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. DEFINITIONS.**

4       As used in this Act—

5               (1) “Secretary” means the Secretary of the In-  
6       terior, acting through the Commissioner of Reclama-  
7       tion;

1           (2) “Reclamation” means the Bureau of Rec-  
2       lamation, United States Department of the Interior;

3           (3) “Fish passage and screening facilities”  
4       means ladders, collection devices, and all other kinds  
5       of facilities which enable fish to pass through, over,  
6       or around water diversion structures; facilities and  
7       other constructed works which modify, consolidate,  
8       or replace water diversion structures in order to  
9       achieve fish passage; screens and other devices which  
10      reduce or prevent entrainment and impingement of  
11      fish in a water diversion, delivery, or distribution  
12      system; and any other facilities, projects, or con-  
13      structed works which are designed to provide for or  
14      improve fish passage while maintaining water deliv-  
15      eries and to reduce or prevent entrainment and im-  
16      pingement of fish in a water storage, diversion, de-  
17      livery, or distribution system of a water project;

18          (4) “Federal reclamation project” means a  
19      water resources development project constructed, op-  
20      erated, and maintained pursuant to the Reclamation  
21      Act of 1902 (32 Stat. 388), and acts amendatory  
22      thereof and supplementary thereto;

23          (5) “Non-Federal party” means any non-Fed-  
24      eral party, including federally recognized Indian  
25      tribes, non-Federal governmental and quasi-govern-

1        mental entities, private entities (both profit and non-  
2        profit organizations), and private individuals;

3            (6) “Snake River Basin” means the entire  
4        drainage area of the Snake River, including all trib-  
5        utaries, from the headwaters to the confluence of the  
6        Snake River with the Columbia River; and

7            (7) “Columbia River Basin” means the entire  
8        drainage area of the Columbia River located in the  
9        United States, including all tributaries, from the  
10       headwaters to the Columbia River estuary.

11 **SEC. 2. AUTHORIZATION.**

12        (a) Subject to the requirements of this Act, the Sec-  
13       retary is authorized to plan, design, and construct, or pro-  
14       vide financial assistance to non-Federal parties to plan,  
15       design, and construct, fish passage and screening facilities  
16       at any non-Federal water diversion or storage project lo-  
17       cated anywhere in the Columbia River Basin when, and  
18       only when, the Secretary determines that such facilities  
19       would enable Reclamation to meet its obligations under  
20       16 U.S.C. 1536(a)(2) regarding the construction and con-  
21       tinued operation and maintenance of all Federal reclama-  
22       tion projects located in the Columbia River Basin, exclud-  
23       ing the Federal reclamation projects located in the Snake  
24       River Basin.

1 **SEC. 3. LIMITATIONS.**

2 (a) The Secretary may undertake the construction of,  
3 or provide financial assistance covering the cost to the  
4 non-Federal parties to construct, fish passage and screen-  
5 ing facilities at non-Federal water diversion and storage  
6 projects located anywhere in the Columbia River Basin  
7 only after entering into a voluntary, written agreement  
8 with the non-Federal party or parties who own, operate,  
9 and maintain the project, and any associated lands, in-  
10 volved.

11 (b) Any financial assistance made available pursuant  
12 to this Act shall be provided through grant agreements  
13 or cooperative agreements entered into pursuant to and  
14 in compliance with the Federal Grant and Cooperative  
15 Agreement Act of 1977 (41 U.S.C. 501).

16 (c) The Secretary may require such terms and condi-  
17 tions as will ensure performance by the non-Federal party,  
18 protect the Federal investment in fish passage and screen-  
19 ing facilities, define the obligations of the Secretary and  
20 the non-Federal party, and ensure compliance with this  
21 Act and all other applicable Federal, State, and local laws.

22 (d) All right and title to, and interest in, any fish  
23 passage and screening facilities constructed or funded pur-  
24 suant to the authority of this Act shall be held by the  
25 non-Federal party or parties who own, operate, and main-  
26 tain the non-Federal water diversion and storage project,

1 and any associated lands, involved. In addition, the oper-  
2 ation, maintenance, and replacement of such facilities  
3 shall be the sole responsibility of such party or parties and  
4 shall not be a project cost assignable to any Federal rec-  
5 lamation project.

6 (e) Consultation under Section 7 of the Endangered  
7 Species Act of 1973 (16 U.S.C. 1536) shall not be re-  
8 quired based solely on the provision of financial assistance  
9 under this Act. Projects or activities that affect listed spe-  
10 cies shall remain subject to applicable provisions of the  
11 Endangered Species Act of 1973.

12 **SEC. 4. OTHER REQUIREMENTS.**

13 (a) In carrying out this Act, the Secretary shall be  
14 subject to all Federal laws applicable to the actions to be  
15 undertaken for the construction of fish passage and  
16 screening facilities. The Secretary shall assist the non-  
17 Federal party or parties who own, operate, and maintain  
18 a non-Federal water diversion or storage project, and any  
19 associated lands, to obtain and comply with any required  
20 State, local, or tribal permits.

21 (b) The Secretary shall comply with State water law  
22 in the application of this Act. All water rights shall remain  
23 with the owner or operator of any non-Federal water di-  
24 version and storage project who receives assistance pursu-  
25 ant to this Act.

1       (c) The Secretary shall coordinate with the Northwest  
2 Power Planning Council; appropriate agencies of the  
3 States of Idaho, Oregon, and Washington; and appro-  
4 priate federally recognized Indian tribes in carrying out  
5 the program authorized by this Act.

6 **SEC. 5. INAPPLICABILITY OF FEDERAL RECLAMATION LAW.**

7       (a) The Reclamation Act of 1902 (32 Stat. 388), and  
8 Acts amendatory thereof and supplementary thereto, shall  
9 not apply to the non-Federal water projects at which the  
10 fish passage and screening facilities authorized by this Act  
11 are located, nor to the lands which such projects irrigate.

12       (b) Notwithstanding any provision of law to the con-  
13 trary, the expenditures made by the Secretary pursuant  
14 to this Act shall not be a project cost assignable to any  
15 Federal reclamation project (either as a construction cost  
16 or as an operation and maintenance cost) and shall be  
17 non-reimbursable and non-returnable to the United States  
18 Treasury.

19 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

20       There are authorized to be appropriated such  
21 amounts as are necessary for the purposes of this Act.

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